

**[MANAGING AGENT NAME]**

**AND**

**[AUDITOR NAME]**

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**DELEGATED AUTHORITY AUDIT TERMS OF BUSINESS AGREEMENT**

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This Agreement is dated [date]

Between the following Parties:

- (1) [MANAGING AGENT NAME], a limited company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [MANAGING AGENT ADDRESS], in respect of [MANAGING AGENT NAME], its subsidiaries and any and all subsidiaries of its ultimate holding company (where 'subsidiary' and 'holding company' shall have the meaning set out in Sections 1159 and 1162 of the Companies Act 2006, or as may be amended or replaced from time to time). **(the Managing Agent)**
- (2) [AUDITOR NAME], a limited company incorporated and registered in [COUNTRY] with company number [NUMBER] whose registered office is at [ADDRESS] **(the Auditor)**.

## Whereas

The Managing Agent agrees to appoint the Auditor to provide the Services and the Auditor agrees to such appointment in accordance with the provisions of this Agreement.

## Agreement

### Definitions and Interpretation

The following definitions and rules of interpretation apply in this Agreement.

#### 1.1 Definitions:

**Assignment:** each review and assurance assignment carried out by the Auditor as detailed in the Scope.

**Commencement Date:** [insert date]

**Confidential Information:** For the purposes of this Agreement, Confidential Information shall mean all information, whether in hard copy or electronic format or communicated orally, which is non-public or which under the circumstances would appear to a reasonable person to be confidential with respect to the Managing Agent or the Services. Confidential Information includes but is not limited to (i) any files, lists or other information relating to the subject matter of the Services; (ii) non-published pricing and financial information and data, including without limitation, financial and business data, product rates and pricing, cost and performance data, pricing factors, profit and profit margins and databases; (iii) strategic, marketing and research information including without limitation, business forecasts, all internal sales, marketing, operations and finance operating systems and data therein; (v) contracts with third parties.

**Deliverables:** all documents, products, and materials produced by the Auditor or its agents, subcontractors, consultants and employees as part of an Assignment or in relation to the Services in any form or media, including without limitation drawings, maps, diagrams, pictures, computer programs, data, specifications and reports (including drafts).

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to

use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Services:** the services to be provided by the Auditor under this Agreement, as detailed via AiMS or an “audit order sheet” or similar written instructions, which will be prepared by the Managing Agent, outlines the sections and questions within the Managing Agent audit scope which are to be completed, together with any other services which the Managing Agent agrees to take from the Auditor.

**Scope:** the scope of each audit requirement as instructed to the Auditor by the Managing Agent will be provided via AiMS or an “audit order sheet” or similar written instructions which outlines the sections and questions within the audit scope which are to be completed, or as otherwise agreed in writing between the Managing Agent and the Auditor.

- 1.2 Clause, Schedule, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Any audit order sheet used from time to time to define the Scope of an audit shall form part of this Agreement and have effect as if set out in full in the body of this Agreement.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

### **Appointment/Commencement and duration**

- 2.1 Notwithstanding the date of signature, this Agreement shall be deemed to have commenced on the Commencement Date and shall continue until terminated in accordance with the provisions set out in this Agreement.
- 2.2 The Auditor shall, from the Commencement Date and for the duration of this Agreement, provide the Services to the Managing Agent in accordance with the terms and conditions of this Agreement.

### **Managing Agent's Obligations**

- 3.1 The Managing Agent shall provide the Auditor with prompt and clear instructions; and if the Managing Agent considers it to be appropriate, the Managing Agent shall provide guidance to the Auditor on any Assignment specific issues.

### **Auditor's Obligations**

The Auditor warrants to the Managing Agent that:

- 4.1 The Auditor will perform the Services with reasonable skill and care, and in accordance with generally recognised good industry practices and standards in the market for similar services;
- 4.2 The Auditor shall ensure that each of the members of its team including subcontractors:
  - a. is suitably qualified, adequately trained and capable of providing the Services;
  - b. has the appropriate experience to undertake the Managing Agent's instructions;and

- c. has the appropriate level and amount of supervision required to provide the Services
- 4.3 Where subcontractors are to be used to undertake some or all of the Services, the Auditor confirms that it shall be responsible for the actions of the subcontractor. This shall include extension of the Auditor's Professional Indemnity insurance.
- 4.4 The Services will conform to all descriptions and specifications provided to the Managing Agent by the Auditor.
- 4.5 The Services will be provided in accordance with all applicable legislation from time to time in force, and the Auditor will inform the Managing Agent as soon as it becomes aware of any changes in that legislation.
- 4.6 The Auditors will advise the Managing Agent immediately of any material concerns identified during the audit, which fall outside the Scope but which it ought reasonably to consider critical to the Managing Agent's business including but not limited to concerns relating to local legislation/regulation, reputational, financial and improper conduct.
- 4.7 The Auditor shall advise the Managing Agent in the event that there are developments either internal or external to the Auditor which may materially affect its ability to achieve the Service Standards or to provide the audit Services more generally.
- 4.8 The provisions of this clause 4 shall survive any performance, acceptance or payment pursuant to this Agreement.

#### **Service Standards**

- 5.1 The Auditor shall allocate sufficient and appropriate resources to enable the Services to be provided in accordance with good industry practice.
- 5.2 The Auditor shall meet any agreed timeframes for the Services specified in this Agreement and/or as otherwise notified to the Auditor by the Managing Agent. If the Auditor fails to do so, the Managing Agent may (without prejudice to any other rights it may have):
  - a. terminate this Agreement in whole, or in part, without liability to the Auditor except for any fees earned up to the date of termination;
  - b. refuse to accept any subsequent performance of the Services which the Auditor attempts to make;
  - c. purchase substitute services from elsewhere;
  - d. hold the Auditor accountable for any reasonable loss and/or additional costs incurred;
- 5.3 The Auditor shall:
  - a. co-operate with the Managing Agent in all matters relating to the Services;
  - b. At the request of the Managing Agent, replace without delay any member of the Auditor's staff, as approved by the managing agent in respect of each Assignment, who shall be suitably skilled, experienced and qualified to carry out the Services.
- 5.4 The Auditor shall:
  - a. promptly notify the Managing Agent of any material change in circumstances that may have an adverse and/or material impact on the Auditor's ability to

- perform the Services, including but not limited to a change in the Auditor's financial situation;
  - b. at all times during the term of this Agreement, maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services;
  - c. promptly notify the Managing Agent of any other obstacles encountered in carrying out or otherwise performing the Services;
  - d. provide all equipment, materials and vehicles and such other items as are required to provide the Services;
  - e. observe all health and safety rules and regulations and any other security requirements that apply at any of the premises relevant to carrying out the Services;
  - f. advise the Managing Agent in writing if there are any actual or potential conflicts of interest, of which the Auditor knows or ought to know having made reasonable and appropriate enquiries that prevents the Auditor from performing the Services;
  - g. hold all materials, equipment and tools, drawings, specifications and data supplied by the Managing Agent to the Auditor ("the Managing Agent Materials") in safe custody at its own risk, maintain the Managing Agent Materials in good condition until returned to the Managing Agent, and not dispose or use the Managing Agent Materials other than in accordance with the Managing Agent's written instructions or authorisation or as required for the proper performance of the Services; and
  - h. not do or omit to do anything which may cause the Managing Agent to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Auditor acknowledges that the Managing Agent may rely or act on the Services.
- 5.5 The Services are provided to and for the benefit of the Managing Agent and subscribing managing agents in respect of each particular binding authority contract, as appropriate.
- 5.6 The following procedure shall apply to all Assignments covered by this Agreement.
- a. The Managing Agent will provide the Auditor with instructions, and such instructions shall include:
    - i. an audit scope;
    - ii. expected time frame within which to complete the audit;
    - iii. a copy of the binding authority and/or any other information or documentation the Auditor would require to undertake the Audit Services.
  - b. The Auditor will ensure that:
    - i. its advice and recommendations are accurate, succinct and comprehensively address the necessary issues;
    - ii. any documents it prepares are similarly accurate, succinct and comprehensive and are written in plain language; and
    - iii. it allocates and handles all work cost effectively and using personnel of the appropriate level of qualification.
- 5.7 If the Auditor is not able to act due to a conflict, it shall immediately destroy any documentation provided by The Managing Agent.
- 5.8 Where audits are managed by the AiMS system the Auditor should add any recommendations to the system in addition to forwarding the audit report to the Managing Agent.

- 5.9 The Auditor is to notify the Managing Agent immediately if in the course of the audit the Auditor has serious concerns regarding the conduct of the Coverholder/TPA. 'Serious concerns' include but are not limited to the following:
- a. a breach of any provision of the binding authority agreement;
  - b. concerns relating to the Coverholder/TPA financial stability and any disregard of tax, fiscal and licensing requirements;
  - c. disregard of Lloyd's and regulatory requirements; or
  - d. any instances of fraud, dishonesty, reckless behaviour or improper conduct.
- 5.10 The Auditor shall keep all of the Managing Agent's instructions under review to ensure that its work is within scope and appropriate, undertaken at the correct level(s), meets deadlines and remains within the scope of any fee regime agreed. The Auditor shall notify the Managing Agent immediately in writing of any concerns which it has with regard to any of these issues.
- 5.11 Assignment shall not commence until the Managing Agent provides written instruction to proceed

### Reporting Standards

- 6.1 During the performance of the Services the Auditor may provide interim oral comments, or written reports, letters, schedules, or hard or soft copies of computer models in draft form, and clearly specify that it is in draft form. As these represent work in progress and not the Auditor's final views or conclusions, the Auditor does not assume a duty of care to the Managing Agent (or anyone else) in respect of them. The final results of the Auditor's work and the Auditor's definitive conclusions will be contained in the Auditor's final report.
- 6.2 The Auditor will provide the Managing Agent with a completed audit report and applicable appendices at the end of each audit based on the audit scope provided by the Managing Agent.
- 6.3 The Auditor is to provide its audit report including an executive summary and applicable appendices to the Managing Agent within (28) calendar days of the final day on-site and/or following the debrief with the Coverholder/TPA.
- 6.4 Audit reports must be submitted in pdf format to the Managing Agent and must include an executive summary, recommendations and appendices.

### Fees & Invoices

- 7.1 In consideration of the provision of the Services by the Auditor, the Managing Agent shall pay the charges for each Assignment agreed between the parties as defined by the Scope instructions and/or any additional instructions agreed during the course of the Assignment.
- 7.2 The charges for the Services shall:
- a. be the full and exclusive remuneration of the Auditor in respect of the performance of the Services;
  - b. unless otherwise agreed by the Managing Agent, include every cost and expense of the Auditor directly or indirectly incurred in connection with the performance of the Services;
  - c. Expenses relating to air travel and expenses above GBP [ ] (or an equivalent in another currency) shall require the Managing Agent's prior consent before being committed; and
  - d. The Auditor shall also provide evidence of any expenditure on the Managing Agent's request.

- 7.3 For each Assignment the Auditor shall invoice the Managing Agent for payment of the charges only after completing the Assignment and providing Deliverables, or as otherwise agreed in writing between the parties.
- 7.4 The Managing Agent shall pay the charges which have become payable within [ ] days of receipt of an undisputed invoice from the Auditor to a bank account nominated by the Auditor in writing, or via Broker/Xchanging as appropriate.
- 7.5 The Auditor shall maintain complete and accurate records of the time spent and materials used by the Auditor in providing the Services, and shall allow the Managing Agent to inspect such records at all reasonable times on request.
- 7.6 In the event that the Managing Agent no longer wishes to proceed with an Assignment, it shall endeavour to provide cancellation instructions in good time to the Auditor. In the event that such cancellation instructions are provided less than [ ] days from the scheduled start of the audit, the Managing Agent will pay any non-refundable expenses/cancellation charges already incurred by the Auditor in respect of the Assignment (on receipt of valid evidence). If cancellation instructions are received more than [ ] days prior to the scheduled start of the audit, no charges or expenses shall be payable by the Managing Agent.

### **Conflicts of Interest**

- 8.1 Prior to accepting instructions from the Managing Agent, the Auditor shall carry out appropriate conflict checks and inform the Managing Agent of any potential conflicts of interest identified which would prevent the Auditor from accepting such instructions. The Managing Agent shall not be required to pay any of the Auditor's fees incurred following a breach of this requirement.

### **Information**

- 9.1 The Auditor shall:
- a. use the Managing Agent's Confidential Information solely for the purposes of providing the audit Services;
  - b. isolate or otherwise keep the Managing Agent's Confidential Information in a clearly identifiable way as the Managing Agent's Confidential Information;
  - c. protect the Managing Agent's Confidential Information by the same security measures and handle such information with the same degree of care as the Auditor applies to its own confidential information and which the Auditor confirms provides adequate protection from unauthorised disclosure; and
  - d. keep all of the Managing Agent's Confidential Information confidential and not disclose it to anyone save to the extent permitted by clause 9.2.
- 9.2 The Auditor may disclose the Managing Agent's Confidential Information to:
- a. the Auditor's personnel or subcontractors who are directly involved in the provision of the audit Services and who need to know the information. The Auditor shall ensure that such personnel are aware of, and comply with, these confidentiality obligations; and
  - b. any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any regulatory authority or other similar body provided that, to the extent it is legally permitted to do so, it gives the Managing Agent as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9 it

takes into account the reasonable requests of the Managing Agent in relation to the content of such disclosure.

- 9.3 The Auditor undertakes to inform the Managing Agent immediately of any breach of the obligations set out in this clause 9.
- 9.4 On the termination of the Agreement, the Auditor shall:
- a. return to the Managing Agent all documents and materials (and any copies) containing, reflecting, incorporating or based on the Managing Agent's Confidential Information, including all such documents and materials provided by the Auditor to any subcontractors for the purpose of providing the Services;
  - b. erase all of the Managing Agent's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable) and ensure that any subcontractor retained for the purposes of the Assignment similarly erases all Confidential Information provided to it for the purposes of the Assignment; and
  - c. certify in writing to the Managing Agent that it has complied with the requirements of this clause 9.4, provided that the Auditor may retain documents and materials containing, reflecting, incorporating or based on the Managing Agent's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 9.5 The provisions of this clause 9 shall continue to apply after termination of this Agreement.

## **Indemnity**

- 10.1 The Auditor shall indemnify and hold the Managing Agent harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Managing Agent as a result of or in connection with any claim made against the Managing Agent in respect of any liability, loss, damage, injury, cost or expense sustained by the Managing Agent's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Auditor.
- 10.2 The Auditor shall maintain in force, with a regulated insurance company, professional indemnity insurance in an amount not less than £1,000,000 (or equivalent in local currency as applicable) for any one claim and shall, on the Managing Agent's request, produce verification of such insurance cover. Such insurance shall be extended to cover any subcontractor retained by the Auditor for the purposes of any Assignment.
- 10.3 The provisions of this clause 10 shall survive termination of this Agreement, however arising.

## **Intellectual Property Rights**

- 11.1 The Auditor assigns to the Managing Agent, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).



- 11.2 The Auditor shall, promptly at the Managing Agent's request or do (or procure to be done) all such further acts and things and the execution of all such other documents as the Managing Agent may from time to time require for the purpose of securing for the Managing Agent the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Managing Agent in accordance with clause 11.1.

## **Data Protection**

- 12.1 The Auditor shall comply with all applicable Data Protection Laws. Where the activities of the Auditor are subject to the Data Protection Act (2018), the Auditor shall additionally comply with the requirements as stated within clauses 12.2-12.10.
- 12.2 Unless otherwise expressly stated in this Section 12.2, the Auditor and the Managing Agent acknowledge and agree that where the TPA or an Underwriter processes Personal Data under or in connection with this Agreement it alone determines the purposes and means of processing as a Controller;

### **ACTIVITIES OF THE AUDITOR IN RESPECT OF WHICH THE AUDITOR PROCESSES PERSONAL DATA AS A PROCESSOR ON BEHALF OF THE MANAGING AGENT:**

[ ]

- 12.3 In respect of the Personal Data the Auditor or a Managing Agent processes under or in connection with this Agreement, it:
- a. shall comply at all times with its obligations under all applicable Data Protection Laws;
  - b. shall ensure that it has in place all appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
  - c. shall notify the other parties without undue delay after, and in any event within 24 hours of, becoming aware of a Personal Data Breach; and
  - d. shall assist and co-operate fully with the other parties to enable each of them to comply with its obligations under the Data Protection Law, including but not limited to in respect of keeping Personal Data secure, dealing with Personal Data Breaches, complying with the rights of Data Subjects and carrying out data protection impact assessments;
- 12.4 The Auditor will only process such Personal Data as is necessary for the performance of the Services in accordance with this Agreement;
- 12.5 The Auditor and the Underwriters shall work together to ensure that each of them is able to process the Personal Data it processes under or in connection with this Agreement for the purposes contemplated by this Agreement lawfully, fairly and in a transparent manner and in compliance with all applicable Data Protection Laws. This shall include but not be limited to entering into such other written agreements as may be required from time to time to enable the Auditor and/or the Managing Agent to comply with applicable Data Protection Laws;
- 12.6 The activities of the Auditor under or in connection with this Agreement in respect of which the Auditor processes Personal Data as a Processor on behalf of the Underwriters, together with the Data Protection Particulars for such processing, are stated in this Section 12.6.

### **DATA PROTECTION PARTICULARS FOR SUCH ACTIVITIES:**

The subject matter and duration of the processing:

[ ]

The nature and purpose of the processing:

[ ]

The type of Personal Data being processed:

[ ]

The categories of Data Subjects:

[ ]

- 12.7 In addition to clauses 12.2, 12.3 and 12.4, where, under or in connection with this Agreement, the Auditor processes Personal Data as a Processor on behalf of the Underwriters, the Auditor shall:
- a. subject to clause 12.7 (e), only carry out such processing on the Underwriters' instructions from time to time. The Auditor shall immediately inform the Underwriters if, in its opinion, an instruction infringes the Data Protection Law;
  - b. where it is required by applicable law to carry out processing otherwise than in accordance with clause 12.7 (a), inform the Underwriters' of the legal requirement before carrying out such processing (unless prohibited from doing so by applicable law);
  - c. not disclose the Personal Data to any person except as required or permitted by this Agreement or with the Underwriters' prior written consent;
  - d. without prejudice to clause 9.2, ensure that all persons authorised to process the Personal Data are under an appropriate contractual or other legal obligation to keep the Personal Data confidential;
  - e. taking account of the nature of the processing, implement appropriate technical and organisational measures (a) in a manner that ensures the processing meets the requirements of the applicable Data Protection Law and the protection of the rights of Data Subjects, (b) to keep the Personal Data secure and to protect against the risk of Personal Data Breaches and (c) to assist the Underwriters to comply with their obligations under the Data Protection Law to respond to requests for exercising the rights of Data Subjects;
  - f. not process the Personal Data, or disclose the Personal Data to any party who carries on business, outside of the European Economic Area except with the Underwriters' prior written consent and, where such consent is given, the Auditor shall take such actions and enter into such agreements as the Underwriters may require to ensure that such processing or disclosure complies with the Data Protection Law;
  - g. not enter into an arrangement with any sub-contractor to process the Personal Data directly or indirectly on behalf of the Underwriters without the prior written consent of the Underwriters and, where such consent is given, the Auditor shall enter into a written agreement with the sub-contractor that includes, as a minimum, provisions in favour of the Underwriters which are equivalent to those in this clause 12.7. The Auditor shall remain fully liable to the Managing Agent for any sub-contractors' processing of Personal Data; and

- h. ensure the reliability of employees and other personnel having access to the Personal Data and will ensure that access to the Personal Data is limited to those of its employees or personnel who require access to it and that such individuals are subject to appropriate user authentication and log-on processes when accessing the Personal Data and have undertaken training in relation to the handling of Personal Data; and
  - i. at the Managing Agent's option, delete or return to the Underwriters all the Personal Data on termination of this Agreement and delete any existing copies of the Personal Data except to the extent that the Auditor is required to retain such Personal Data by applicable law.
- 12.8 The Auditor shall make available to the Managing Agent all information necessary to demonstrate its compliance with its obligations under these clauses 12.2 to 12.10 and the Underwriters reserve the right to audit the Auditor's compliance with its obligations under these clauses 12.2 to 12.10.
- 12.9 The Auditor's obligations under these clauses 12.2 to 12.10 continue throughout this Agreement and for a period of seven (7) years thereafter or such other period as the Underwriters may require or as may be required pursuant to any applicable law or regulation.
- 12.10 For the purposes of these clauses 12.2 to 12.10:

**Controller** means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

**Data Protection Law** means all applicable statutes and regulations in any jurisdiction pertaining to the processing of Personal Data, including but not limited to the privacy and security of Personal Data;

**Data Protection Particulars** means, in relation to any processing of Personal Data by the Auditor under or in connection with this Agreement as a Processor on behalf of the Underwriters: (a) the subject matter and duration of the processing; (b) the nature and purpose of the processing; (c) the type of Personal Data being processed; and (d) the categories of Data Subjects;

**Data Subject** means the identified or identifiable natural living person to whom the Personal Data relates;

**Personal Data** means any information relating to the Data Subject;

**Personal Data Breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed; and

**Processor** means the person which processes Personal Data on behalf of the data Controller.

### **Anti Bribery and Corruption**

- 13.1 The Auditor shall maintain strict compliance with the provisions of the Bribery Act 2010 and any other anti-bribery and corruption legislation in jurisdictions other than the United Kingdom in which it may be instructed to act for or on behalf of the Managing Agent.
- 13.2 A breach by the Auditor of Clause 13.1 shall constitute a material breach of this Agreement under Clause 14.2(b) (Termination) and the Managing Agent shall have the option to terminate this Agreement with immediate effect.

## Termination

- 14.1 Either party may terminate this Agreement on giving not less than 30 days' notice to the other party.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other if:
- a. the other party becomes insolvent, makes a voluntary arrangement with its creditors, goes into liquidation (other than for purposes of a bona fide amalgamation or reconstruction) or ceases or threatens to cease its business operations; or
  - b. The other party commits a material breach under this Agreement and such breach despite being capable of remedy is not remedied within 30 days from the breaching party receiving a written notice to rectify.

## Consequences of termination

- 15.1 On termination of this Agreement for any reason:
- a. At the Managing Agent's request, the Auditor shall immediately provide all Deliverables whether or not then complete, and return all materials including all copies of information and data provided by the Managing Agent. The Auditor shall certify to the Managing Agent that it has not retained any copies of the Managing Agent materials or other information or data, except for one copy which the Auditor may use for audit purposes only and subject to the confidentiality obligations in clause 9;
  - b. all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Managing Agent (to the extent that they have not already done so by virtue of clause 11), who shall then be entitled to enter the premises of the Auditor to take possession of them.
  - c. The Auditor shall return or erase any and all Confidential Information in accordance with clause 9.4 above;
  - d. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
  - e. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15.2 If this Agreement is terminated then the Managing Agent shall have the right, subject to payment in full of all undisputed charges connected therewith, to require the Auditor to continue any Assignments as are uncompleted at the date of termination. During such time the Auditor shall be entitled to retain any of the Managing Agent Materials in order to fulfil its obligations pursuant to this clause 15.2.

## **Entire Agreement**

- 16.1 This Agreement sets out the entire agreement between the Parties and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement. It shall also take precedence over any term and conditions put forward by the Auditor in the event of any conflict.
- 16.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedies in respect of, any representation warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement or those documents (whether made innocently or negligently) shall be for breach of contract.
- 16.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **Variation**

- 17.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **Force majeure**

- 18.1 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevents the Auditor from providing any of the Services for more than 4 weeks, the Managing Agent shall have the right, without limiting its other rights or remedies, to terminate this Agreement with immediate effect by giving written notice to Auditor.

## **Waiver**

- 19.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 19.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **Remedies**

- 20.1 If any Services are not supplied in accordance with, or the Auditor fails to comply with, any terms of this Agreement, the Managing Agent shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:
- a. to rescind this Agreement; or
  - b. to refuse to accept the provision of any further Services by the Auditor; or
  - c. to require the Auditor, without charge to the Managing Agent, to carry out such additional work as is necessary to correct the Auditor's failure; and

- d. in any case, to claim such damages as it may have sustained in connection with the Auditor's breach (or breaches) of this Agreement not otherwise covered by the provisions of this clause.

The Managing Agent's rights under this Agreement are in addition to the statutory terms implied in favour of the Managing Agent by the Supply of Goods and Services Act 1982 and any other statute.

### **Assignment**

- 21.1 No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

### **Severability**

- 22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 22.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **Relationship of the Parties**

- 23.1 Nothing in this Agreement is intended to, or shall be deemed to; create a partnership or joint venture of any kind between any of the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **Third Party Rights**

- 24 No one other than a party to this Agreement shall have any right to enforce any of its terms.

### **Counterparts**

- 25 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

### **Governing Law and Jurisdiction**

- 26.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 26.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## Notices

- 27 Notices must be in writing and sent by prepaid recorded delivery or registered post to the relevant Parties at the place of business listed in the recitals on Page 2 of this Agreement and marked for the attention of the signatory to this Agreement. Notices are deemed delivered five (5) Working Days after posting.

**This Agreement has been entered into on the date stated in the recitals on Page 2**

Signed by [NAME & POSITION]

for and on behalf of:

The Managing Agent

.....

Signed by the Auditor

[NAME & POSITION]:

for and on behalf of:

The Auditor

.....

LMA 9165  
26/07/2019